International Brotherhood of Electrical Workers, Local Union No. 98 *and* Honeywell Inc., Home & Building Control. Case 4–CD–991

September 29, 2000

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The charge in this Section 10(k) proceeding was filed on October 16, 1998, by Honeywell Inc., Home & Building Control, alleging that the Respondent, the International Brotherhood of Electrical Workers, Local Union No. 98 (Local 98), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer (Honeywell) to assign certain work to electricians it represents who are employed by various contractors rather than to installers it represents who are employed by Honeywell. The hearing was held on November 24 and December 3, 1998, before Hearing Officer Allene McNair-Johnson.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.[1]

I. JURISDICTION

Honeywell is a Delaware corporation engaged in the business of installing and servicing commercial and home security systems. It has approximately 40 security offices in the United States, including a facility in Philadelphia, Pennsylvania. During the 12-month period prior to the hearing, Honeywell purchased and received goods and materials valued in excess of $50,000 at its Philadelphia, Pennsylvania facility directly from points located outside the Commonwealth of Pennsylvania. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 98 is a labor organization within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Dranoff Properties is the owner of the Locust on the Park apartment complex in Philadelphia, Pennsylvania, a major construction project. In August 1998,[2] Honeywell entered into a contract with Dranoff to install a security system at Locust on the Park. The installation was to begin in October, and take 6 to 10 weeks. The security system included a telephone entry system, emergency phone access control/alarm monitoring, and closed circuit television. Installation of the security system involved pulling or running low-voltage wires through walls and/or ceilings, mounting the security devices, connecting wires to the security devices and to the control panel, programming the control panel to perform particular functions and make the system operational, and testing the system.

Honeywell assigned the security system installation work at Locust on the Park to its installer employees. These Honeywell installers are represented by Local 98. At all times material, Local 98 and Honeywell have had a current collective-bargaining agreement covering Honeywell's installers. Local 98 also represents electricians who work for over 100 other contractors. Honeywell has no contract with Local 98 covering electricians.

On October 8, Honeywell Installer Edward Klak reported to the jobsite at Locust on the Park to begin the first step in installing the security system, running the wires for the system. Klak told Local 98 Business Agent John Dershimer that he was there to do some alarm, camera, and card access work. Klak testified that Dershimer told him that "it was a building trades job and that [Honeywell installers] would not be running the wire." Klak left the jobsite without beginning the installation work.

Klak returned to the jobsite on October 13 with Honeywell Installer Ronald Kinter. They were directed to talk to Dershimer at the union hall. Klak and Kinter went to the union hall and asked Dershimer what the problem was. According to Klak, Dershimer said, "[W]hen the job is bid that it's bid to be done at the A rate . . . then Honeywell comes in and underbids that . . . if Honeywell wants to bid it at the A rate and have an A rate contract they could do the work, otherwise it was a building trades job[.]" Dershimer acknowledges telling Klak and Kinter at the union hall that "it was a building trades job to be done by building trades personnel." The Honeywell installers did not go back to the jobsite on October 13.

On October 16, Honeywell Installer Kinter reported to the jobsite with Honeywell Service Manager Matt Slusarski to start pulling the wires for the security system. Bill Carrazzo introduced himself as the Local 98 business agent.[3] Kinter told Carrazzo that they were there to pull lines for the job. According to Kinter's unrefuted testimony, Carrazzo asked them, "Weren't you down at the union hall and you were told that you cannot pull lines in here, it's an A card job." Carrazzo further said, "If you pull lines, it's going to—if you attempt to pull any lines, it's going to be a job stoppage." Kinter asked Carrazzo what he meant by job stoppage and Carrazzo replied, "[I]f you pull any lines it's going to be a job stoppage and we're

[1] We grant the Employer's unopposed motion to correct the transcript.

[2] All subsequent dates are in 1998.

[3] Dershimer testified that Carrazzo is a Local 98 organizer.

going to throw a picket line up." Slusarski clarified with Carrazzo by asking, "[I]f we pull lines that you're going to have a job stoppage and also you're going to picket the place?"

Honeywell Business Unit Leader Anthony Pagnotti testified that because Honeywell installers were not allowed to proceed with the work, Honeywell fell behind on the job. He further stated that Honeywell was in jeopardy of losing the contract and being sued for non-performance. As a result, Honeywell assigned the work of pulling the wires to Sunshine Electric, the on-site electrical contractor whose employees were represented by Local 98.

B. Work in Dispute

As set forth in the notice of hearing, the disputed work involves the installation of security systems, devices and equipment, including control panels, card access systems and closed circuit television security devices, the programming of the panels, and the running of low-voltage wiring related to the installation or operation of security and fire alarm systems and camera and card access systems at the new construction project at Locust on the Park at 232–254 South 24th Street, Philadelphia, Pennsylvania.

C. Contentions of the Parties

Honeywell contends that there are competing claims for the installation work and reasonable cause exists to believe that Local 98 has violated Section 8(b)(4)(D) of the Act. It further argues that the work in dispute should be awarded to its installers based on the factors of certification and collective-bargaining agreement, employer preference and past practice, area and industry practice, relative skills, and economy and efficiency of operations.

Local 98 contends that the Board should quash the notice of hearing because there are no competing claims for the work and no reasonable cause to believe that Section 8(b)(4)(D) of the Act was violated. Local 98 also argues that the arbitration provision of the collective-bargaining agreement between Honeywell and Local 98, asserted to be the only parties in this case, provides a voluntary method of resolving the instant dispute. If the Board decides to issue an award of work, Local 98 argues that the work should be awarded to its electricians based on the factors of relative skills and area and industry practice.

D. Applicability of the Statute

Before the Board may proceed with a determination of dispute under Section 10(k) of the Act, it must be satisfied that: (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated;[4] and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute.

We find that there are competing claims for the work by two different groups of employees, despite the fact that both groups of employees are represented by Local 98.[5] That the work has been claimed on behalf of Local 98-represented installers employed by Honeywell is evidenced by the fact that Honeywell initially assigned the security installation work to its installers who, on several occasions, tried to perform the work but were turned away by Local 98 representatives. As to the rival claim, Local 98, through its statements, claimed the work on behalf of non-Honeywell electricians whom it represents, and those electricians ultimately performed the work. *Longshoremen ILWU Local 8 (Collier Carbon & Chemical Corp.)*, 231 NLRB 179, 180 (1977) (employees' performance of the work indicated that they claim the work in dispute).

We further find reasonable cause to believe that Section 8(b)(4)(D) has been violated based on the uncontradicted testimony that Local 98 agent Carrazzo threatened that there would be a job stoppage and a picket line if the Honeywell installers performed the work in dispute.

Finally, there is also no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. The arbitration provision relied on by Local 98 does not specifically encompass jurisdictional disputes and, in any event, the collective-bargaining agreement between Honeywell and Local 98 (covering Honeywell installers) does not apply to, and would have no binding effect on, the Local 98 electricians. *Painters Local 479 (Giltspur Exhibits/Pittsburgh)*, 278 NLRB 1021, 1023–1024 (1986).

Accordingly, we find that the dispute is properly before the Board for determination. Therefore, we reject Local 98's argument that the notice of hearing should be quashed.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case.

[4] We note that "[t]his reasonable cause standard is substantially lower than that required to establish that the statute has in fact been violated." *Plumbers Local 562 (C & R Heating & Service Co.)*, 328 NLRB 1235 (1999).

[5] See *Bricklayers Local 1 of Tennessee (Shelby Marble & Tile),* 188 NLRB 148 (1971).

Machinists Lodge 1743 (J. A. Jones Construction), 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreement

The record does not establish that Local 98 has been certified by the Board as the collective-bargaining representative for the Honeywell installers or for the electricians.[6] Nor is there evidence indicating that a Board certification covers the work in dispute. Accordingly, this factor favors neither group of employees in determining the dispute.

Honeywell and Local 98 have an existing collective-bargaining agreement which expressly covers the classification of installers but does not specify what work is covered. The record contains no collective-bargaining agreements between Local 98 and any of the employers of the electricians. Therefore, the factor of "collective-bargaining agreement" slightly favors an award of the work in dispute to the Honeywell installers.

2. Employer past practice

Honeywell presented evidence, through witness testimony, that for over 20 years, it has consistently assigned security installation work to its installers. The record establishes, and Local 98 concedes, that this factor favors an award of the work in dispute to the Honeywell installers.

3. Employer preference

Honeywell presented evidence that it has historically performed security installation work using its installers and that it attempted to do so on the Locust on the Park project on three occasions. As stated in its brief, and as inferred from Unit Leader Pagnotti's testimony, Honeywell expressed its preference in assigning the disputed work to its installers. This factor favors an award of the work in dispute to the Honeywell installers.[7]

4. Area and industry practice

The record indicates that both Honeywell installers and electricians represented by Local 98 have performed security installation work similar to the work in dispute at various jobsites in the Philadelphia area. Accordingly, this factor does not favor an award of the work in dispute to either group of employees.[8]

5. Relative skills

Honeywell witnesses Pagnotti and Klak testified that the Employer's installers are trained and experienced in performing all aspects of the security installation work: running the wiring, mounting the security devices, connecting wires to the security devices and to the control panel, and using Honeywell proprietary software to program the control panel. They further testified that Honeywell installers also are skilled at modifying placement of wires and devices from locations set forth in blueprints. Although Local 98 Business Agent Dershimer testified that Local 98 electricians are skilled at blueprint reading, setting up and pulling wiring, and terminating devices, Pagnotti stated that the Local 98 electricians are not skilled at programming the control panel using Honeywell software and, therefore, they cannot make the security system operational. This factor favors an award of the work in dispute to the Honeywell installers.[9]

6. Economy and efficiency of operations

Pagnotti and Klak testified that Honeywell installers can install and make operational the entire security system. Pagnotti further testified that it is most efficient for the installer to troubleshoot any problems with the security system in the first 30 days as the installer is most familiar with how the wire was pulled, the design of the system, where the devices were placed, and how the system was programmed. According to Pagnotti, it would take more time and on-site supervision for Local 98 electricians to install a Honeywell security system and they would be unable to complete the process because they cannot make the system operational. Also, as part of its contract for the Locust on the Park job, Honeywell performs a final connect test to check out the system for defects. Pagnotti testified that if defects are found in the first 30 days, Honeywell installers would normally correct them. However, if Honeywell used Local 98 electricians to install the system, Honeywell would then have to supervise the Local 98 electricians while they corrected any defects. Thus, Pagnotti explained, assigning the work to Local 98 electricians not only would increase the time it takes to complete the work but also would increase costs and thereby impose an economic hardship on Honeywell. The record shows, and

[6] Although the Honeywell-Local 98 agreement, which covers the installers, states that Local 98 is "certified," it does not define that term. Further, as argued by Local 98, the record contains no evidence of prior Board certifications.

[7] At the hearing, Honeywell did not expressly address the factor of employer preference in its case in chief and was precluded from doing so on rebuttal by the hearing officer. Nevertheless, the record evidence shows that this factor clearly favors an award of the work in dispute to the Honeywell installers.

[8] In view of this determination, it is unnecessary to rule on the Employer's exception to the hearing officer's ruling limiting testimony relating to this factor.

[9] To the extent that Local 98 argues that the installation work must be performed by electricians who are licensed to perform the work, the record is insufficient to establish that the Philadelphia Electrical Code imposes such a requirement. See generally *Electrical Workers Local 581 (National Telephone & Signal Corp.)*, 223 NLRB 538, 540 (1976).

Local 98 concedes, that this factor favors an award of the work in dispute to the Honeywell installers.

CONCLUSIONS

After considering all the relevant factors, we conclude that Honeywell installers represented by Local 98 are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement, employer past practice, employer preference, relative skills, and economy and efficiency of operations.

In making this determination, we are awarding the work to the Honeywell installers represented by Local 98, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employee installers of Honeywell Inc., Home & Building Control represented by the International Brotherhood of Electrical Workers, Local Union No. 98 are entitled to perform work installing the security system at Locust on the Park at 232–254 South 24th Street, Philadelphia, Pennsylvania.

2. International Brotherhood of Electrical Workers, Local Union No. 98 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Honeywell Inc., Home & Building Control to assign the disputed work to electricians represented by International Brotherhood of Electrical Workers, Local Union No. 98.

3. Within 14 days from this date, International Brotherhood of Electrical Workers, Local Union No. 98 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing Honeywell Inc., Home & Building Control, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.